

Testimony of

Stephen Sondheim

April 28, 2004

Prepared Testimony
Stephen Sondheim
The Playwrights Licensing Antitrust Initiative Act:
Safeguarding the Future of American Live Theater
Senate Committee on the Judiciary
April 28, 2004

Mr. Chairman. Members of the Committee.

I appreciate having the opportunity to appear before you today in support of The Playwrights Licensing Antitrust Initiative Act.

Mr. Chairman, I was President of the Dramatists Guild from 1973 to 1981 and am now a member of its Council, as is my colleague Wendy Wasserstein. I should note that joining us here today, but not at the Witness table, are John Weidman, the current President and Marsha Norman, our Vice President. The purpose of our being here is to ensure that we leave a legacy of a vibrant theater world to the next generation of playwrights.

The Dramatists Guild is the only professional association for playwrights, composers and lyricists. The Guild works to advance the rights of its more than 6,000 members. Membership, incidentally, is open to all dramatic writers, regardless of their production history.

The Dramatists Guild is not a union, and because of our unique status in the theater, we do not come under the protections of the National Labor Relations Act. We do not necessarily meet the definition of "employee" that would allow us to bargain collectively. And that is what we are here to talk about, since it is at the heart of our collective concern about the future of the theater.

As you know, Mr. Chairman, I have been working for some time with you and other members of Congress to promote this legislation. I have walked the halls of Congress and met with Members and their staffs to highlight the problems in today's theater.

Your leadership on this legislation, Mr. Chairman, along with that of Senator Kennedy, its co-author, is deeply appreciated. And we are encouraged by companion legislation, which was introduced in the House last Congress by Representatives Hyde and Frank, legislation which will be reintroduced shortly. The breadth of support for this legislation shows that it is not a partisan issue confined by ideological boundaries.

Arthur Miller spoke eloquently about the importance of theater to the nation. I won't embellish on what he said, but I would like to underscore his comment that we are not here today speaking for our own interests; we are speaking for others whose names may not be as well known as ours. This may sound altruistic, but I assure you it is not. Without them the theater has no future. Like Wendy and Arthur, I have been fortunate enough to have my work win critical acclaim, including a Pulitzer Prize and a number of Tony Awards. If we and others like us can use our success to ensure the opportunity for others, then we truly will have spent our time here well.

In walking the halls of Congress during these past months - and it's an awesome walk - I have learned that changes to our laws do not come easily, nor should they. Especially in the antitrust arena, change is very difficult to achieve. Exemptions should not come easily. Yet case precedent has granted the same exemptions we seek to both choreographers and scenic designers, who are permitted to own their own work and bargain collectively. I believe

that playwrights and lyricists and composers should be allowed the same opportunity and that this proposed legislation is necessary. Lest this seem to be an adversarial issue with theater producers, let me quote to you a letter written to the Chairman and ranking Members in support of this legislation by Harold Prince, my collaborator for many years since *West Side Story*, our first venture together, and a man who is generally acknowledged to be the contemporary American theater's leading producer and director. As much as anyone in today's theater, he understands both sides of the issue, since he too is both employer and employee. I quote:

"As things stand today, some of the great plays and musicals that have not yet been written may never be. Increasingly, up-and-coming playwrights face pressures that are driving them to other media.

"Our core problem is to encourage a return to the negotiation process. Hiding behind arguments about anti-trust prevents us from a practical confrontation. Producers and playwrights are natural allies. Or should be.

"Before it is too late, we must save a vital resource of our nation's artistic life. I hope that your hearings will provide the momentum to get us back to the table. It sounds melodramatic, (of course, I am in the theater) but time is running out. It really is."

Since there are serious questions about coverage of the Dramatists Guild under the NRLA, our ability to work cooperatively and take collective actions on behalf of our members might be subject to attack on antitrust grounds. A standard form contract updating the one that was agreed to as part of a consent decree more than two decades ago might be unenforceable as violating the antitrust laws.

This is not just an economic issue, it is one of intellectual property rights. I, like my colleagues here, have often had to fight for these rights. For instance: one show I wrote, *Merrily We Roll Along*, is a piece that goes backwards in time. It starts with the end of the story and, scene by scene, proceeds back to the beginning. One producer tried to reverse the order of the play because he believed it would be easier for the audience to understand. Needless to say, it did not improve matters, but even if it had, it was not the show we had written or intended to be presented.

Because I was a recognized name in the theater and had a certain amount of what is known as "clout," I was able to protect the piece and stop the production, thus preserving the integrity of my intellectual property. Not every playwright is so lucky. And it is partly due to this collective ability of the Dramatists Guild that those rights can be enforced. But under the outdated contract we now have with theater producers, our ability to negotiate realistically, based on current market factors and realities, is limited.

As a creative artist in your own right, Mr. Chairman, you understand how important an artist's intellectual property is. A limited exemption to the antitrust laws, as your legislation provides, does not choose sides. Rather, it will help create a competitive marketplace where all interests can be appropriately balanced.

We all look forward to working with you and the Members of the Committee on this important legislation, important not only to us as writers but to the future of the American theater as well.

Thank you for listening.